

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	FIRST MODIFICATION TO
	)	CONSENT DECREE
v.	)	
	)	
ESSROC CEMENT COMPANY	)	
	)	Civil Action No. CV
	)	
Defendant.	)	

WHEREAS, prior to November 2011, the United States of America (“United States”) and Essroc Cement Company (“Essroc”) engaged in negotiations to resolve alleged Clean Air Act violations at Essroc’s cement production facilities in a cooperative manner, without the transaction costs associated with protracted litigation;

WHEREAS, the Commonwealth of Pennsylvania, Department of Environmental Protection, the State of West Virginia, the State of Indiana, and the Commonwealth of Puerto Rico (the “Affected States”) joined these negotiations along with several other states and state pollution control agencies (collectively, “State Parties”);

WHEREAS, as a result of these negotiations, an agreement was reached and embodied in this consent decree (the “2012 Decree”), which resolved certain claims alleged by the United States and the State Parties against Essroc under the Clean Air Act and comparable state laws;

WHEREAS, the 2012 Decree required that Essroc implement compliance measures and mitigation projects at several Essroc cement production facilities and pay civil penalties for alleged past violations;

WHEREAS, this Court entered the 2012 Decree on February 15, 2012, and has retained jurisdiction over implementation and enforcement of the 2012 Decree;

WHEREAS, on July 31, 2013, Essroc submitted an SCR Pilot Study Report to the United States Environmental Protection Agency (“EPA”) pursuant to Paragraph 19 and Appendix B of the 2012 Decree;

WHEREAS, the SCR Pilot Study Report contained the conclusion that SCR (Selective Catalytic Reduction) is not a feasible emissions reduction system at Essroc’s Logansport kiln in Indiana.

WHEREAS, on December 17, 2013, EPA disapproved the SCR Pilot Study Report and directed Essroc to correct deficiencies in it;

WHEREAS, on December 26, 2013, Essroc requested informal dispute resolution regarding the SCR Pilot Study and, on April 28, 2014, Essroc requested formal dispute resolution regarding the SCR Pilot Study, under the provisions of the 2012 Decree;

WHEREAS, the State of Indiana is a party to the dispute regarding the SCR Pilot Study, and the State of Indiana and the Commonwealth of Puerto Rico have interests in additional issues concerning Essroc’s implementation of the 2012 Decree at its Speed, Indiana, and San Juan, Puerto Rico facilities;

WHEREAS, Essroc, the United States, and the Affected States (collectively the “Parties”) have agreed to this First Consent Decree Modification (the “First Modification”) to resolve the

dispute regarding the SCR Pilot Study and the additional Consent Decree compliance issues referenced above;

WHEREAS, Paragraph 103 of the 2012 Decree allows the Decree to be amended by written agreement of the United States, Essroc, and those State Parties that are affected by the amendment;

WHEREAS, the Parties agree, and the Court by entering this First Modification of the 2012 Decree finds, that the amendments to the 2012 Decree set forth herein are fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that the 2012 Decree in this matter is modified as follows:

1. This First Consent Decree Modification (“First Modification”) shall apply to, and be binding upon, the Parties as a partial amendment to the original 2012 Decree.
2. Essroc shall make available a copy of this First Modification to each principal environmental contractor retained to perform any activity required or affected by this First Modification.
3. This First Modification shall not be construed to alter, affect or amend the 2012 Decree in any way other than provided herein and shall not affect the rights under the 2012 Decree of any State Parties other than the Affected States.
4. It is the purpose of the Parties in entering into this First Modification to further the objectives of the Parties as provided in the original 2012 Decree.

5. Unless otherwise defined herein, terms used in this First Modification shall have the meaning given to those terms in the 2012 Decree, the Clean Air Act and the regulations promulgated thereunder.

6. Table 2 in Paragraph 17 of the 2012 Decree (NO<sub>x</sub> controls) is modified to show changes in the controls and in the 30-Day Rolling Average Emission Limits for the units at Logansport, Speed, and San Juan and reads as follows:

**Table 2**

<b>Kiln</b>	<b>Control Technology</b>	<b>30-Day Rolling Average Emission Limit (lb/ton clinker produced)</b>	<b>Date required to meet 30-Day Rolling Average Emission Limit</b>
Bessemer Kiln 4	N/A	Retire	December 31, 2011
Bessemer Kiln 5	N/A	Retire	December 31, 2011
Martinsburg Kiln 1	SNCR	2.15	December 31, 2012
Logansport Kiln 1	SNCR	Demonstration of SNCR pursuant to Paragraphs 19 and Appendix A, Emission Limit no higher than 7.00	Schedule pursuant to Paragraph 19 and Appendix A
Logansport Kiln 2	SNCR	Demonstration of SNCR pursuant to Paragraphs 19 and Appendix A, Emission Limit no higher than 7.00	Schedule pursuant to Paragraph 19 and Appendix A
Speed Kiln 1	SNCR	3.00	July 1, 2015
Speed Kiln 2	SNCR	1.95	July 1, 2015

Nazareth Kiln 1	SNCR	2.30	July 1, 2012
San Juan Kiln 3	SNCR	1.50	December 31, 2015

7. Paragraph 18.b of the 2012 Decree is modified to set the NO<sub>x</sub> limit at San Juan Kiln 3 and reads as follows:

“b. Essroc shall achieve and maintain compliance with a 30-Day Rolling Average Emission Limit for NO<sub>x</sub> at San Juan Kiln 3 of 1.5 lbs/ton clinker by December 31, 2015.”

8. Paragraph 19 of the 2012 Decree is modified to require Essroc’s installation and operation of Selective Non-Catalytic Reduction (“SNCR”) at Logansport Kilns 1 and 2 and Essroc’s performance of a Selective Catalytic Reduction (“SCR”) demonstration project at Logansport 1 and reads as follows:

Subparagraph d. in Paragraph 19 of the 2012 Decree is deleted. Subparagraphs a., b., and c. are replaced, as follows:

“a. Essroc shall install and Commence continuous Operation of SNCR technology by September 30, 2015 at Logansport Kiln 1. Essroc shall propose, by May 30, 2017, a 30-Day Rolling Average Emission Limit for NO<sub>x</sub>, pursuant to Appendix A, that is applicable to Logansport Kiln 1 that is no less stringent than 7.00 lb/ton of clinker and that represents the optimal performance and Continuous Operation of the SNCR technology. Within 30 Days after proposing a 30-Day Rolling Average Emission Limit for NO<sub>x</sub> at Logansport Kiln 1 under Appendix A, Essroc shall achieve and thereafter maintain compliance with the proposed 30-Day Rolling Average Emission Limit for NO<sub>x</sub> at the Kiln. U.S. EPA shall review the

proposed 30 Day Rolling Average Emission Limit pursuant to Appendix A and Section XI (Review and Approval of Submittals). Pursuant to Paragraph 24 of Appendix A, if EPA's review results in an alternative final 30-day Rolling Average Emission Limit, Essroc shall comply with the alternative final 30-day Rolling Average Emission Limit within 30 days of EPA's notice.

b. Essroc shall install SNCR and commence Continuous Operation of SNCR technology at Logansport Kiln 2, by September 30, 2016. Essroc shall propose, by May 30, 2018, a 30-Day Rolling Average Emission Limit for NO<sub>x</sub>, pursuant to Appendix A, that is applicable to Logansport Kiln 2 that is no less stringent than 7.00 lb/ton of clinker and that represents the optimal performance and Continuous Operation of the SNCR technology. Within 30 Days after proposing a 30-Day Rolling Average Emission Limit for NO<sub>x</sub> at Logansport Kiln 2 under Appendix A, Essroc shall achieve and thereafter maintain compliance with the proposed 30-Day Rolling Average Emission Limit for NO<sub>x</sub> at the Kiln. U.S. EPA shall review the proposed 30 Day Rolling Average Emission Limit pursuant to Appendix A and Section XI (Review and Approval of Submittals). Pursuant to Paragraph 24 of Appendix A, if EPA's review results in an alternative final 30-day Rolling Average Emission Limit, Essroc shall comply with the alternative final 30-day Rolling Average Emission Limit within 30 days of EPA's notice."

c. Essroc shall perform a Selective Catalytic Reduction (SCR) demonstration project.

- Essroc will submit a design report for approval by March 31, 2015.

- The demonstration will be designed to use a gas reheat system achieve a temperature above (to be discussed) but below (to be discussed).
- Essroc will not implement the proposed plan until the EPA has approved the proposed plan. The study will collect at least 120 operating days of valid data.
- The project will be evaluated based upon the parameters listed in paragraph 5 of Appendix B of the 2012 Decree.
- Essroc will produce a comprehensive technical report for the demonstration.

9. Appendix C to the 2012 Decree is amended as follows:

In paragraph 1, substitute \$995,000 for \$745,000, to reflect Essroc’s enhanced mitigation effort.

Insert a new subparagraph 1.e), as follows:

“e) By , 2015, at Logansport, Essroc shall replace the tier 0 engine in a CAT 992 D Loader, estimated to cost \$250,000.”

10. In the exercise of their discretion under Paragraph 60 of the 2012 Decree, EPA and the Affected States hereby waive stipulated penalties assessed or to be assessed for violations of the

2012 Decree at Essroc's Logansport, Speed and and San Juan facilities during the period from February 16, 2012 through December 11, 2014.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of  
*United States of America v. Essroc Cement Company*, Civil Action No. .

FOR THE UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

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